

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATRIA NUNEZ,

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----X

11 Civ. 8519 (PAE)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Before the Court is the July 18, 2013 Report and Recommendation (“Report”) of Magistrate Judge Kevin Nathaniel Fox, recommending that the Court grant defendant’s unopposed motion for judgment on the pleadings. For the reasons that follow, the Court adopts the Report in full.

I. Background and Procedural History

On November 18, 2011, Patria Nunez (“Nunez”), proceeding *pro se*, filed this action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), seeking judicial review of a final decision finding her ineligible for disability insurance benefits and Supplemental Security income. Dkt.

2.

On June 11, 2012, defendant moved for judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c). Dkt. 15. Nunez failed to oppose the defendant’s motion, despite having originally been ordered to do so by July 9, 2012, *see* Dkt. 17, and later having been given

until May 20, 2013, *see* Dkt. 18.¹ On July 18, 2013, Judge Fox issued the Report, Dkt. 22, recommending that the Commissioner's motion for judgment on the pleadings be granted because "[t]he ALJ applied the correct legal standard in finding that Nunez was not disabled" and that decision was "supported by substantial evidence." Report 8.

The deadline for the parties to file objections to the Report was August 5, 2013. To this date, no objections have been filed.

II. Discussion

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). To accept those portions of the report to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009) (quoting *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)); *see also Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006).

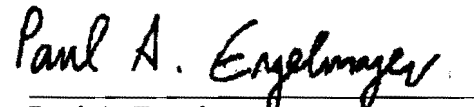
Because Nunez has not submitted objections to the Report, a review for clear error is appropriate. Careful review of the Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that "[f]ailure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review," Report 9, Nunez's failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989)).

¹ In an order dated May 1, 2013, Judge Fox warned Nunez that "[i]f no opposition is served and filed by the plaintiff, the defendant's motion will be treated as unopposed." Dkt. 18.

CONCLUSION

For the reasons stated herein, the Court adopts the Report in full. The defendant's motion for judgment on the pleadings is granted. The Clerk of Court is directed to terminate the motion pending at docket number 15, and to close this case.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: August 19, 2013
New York, New York